BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of	)	
Implementation of the Telecommunications Act of 1996:	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	

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REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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CC Docket No 96-115

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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SUMMARY*

The Commission should first make clear that Section 222(c)(1), the core of the CPNI statute, applies to all telecommunications carriers regardless of type or class. Congress did not intend that its rules would apply to fewer than all carriers, and the Commission has no record basis on which to conclude differently. The asymmetric Computer III rules should not apply after the Commission adopts new rules interpreting Section 222. The pre-existing rules conflict with the Congressional mandate that all carriers be subject to the same CPNI requirements.

A flexible and broad application of the term "telecommunications service" would enhance the convenience and efficiencies afforded by one-stop shopping, eliminate customer confusion regarding service distinctions, and limit small and large carriers' implementation costs, without compromising customers' legitimate expectations of privacy. Section 222(c)(1) should thus be construed to permit CPNI derived from the provision of telecommunications service to be used in connection with any telecommunications service offering made by the carrier (including an affiliated telecommunications carrier), whether made singly for the user's choosing or in combination with other offerings comprising an integrated telecommunications service package.

With regard to using CPNI for purposes outside of Section 222(c)(1)(A) and (B), customers expect that their telecommunications service providers will find new and better ways to meet their needs and desires. A carrier, therefore, should be permitted to provide its customers with a one-time CPNI notification that fairly and adequately informs them of their CPNI rights,

* All abbreviations used herein are referenced within the text.

and should be permitted to use a customer's CPNI for these purposes unless the customer contacts it to restrict or deny use. A prior written authorization requirement would be contrary to Congressional intent, and neither as effective to preserve customers' one-stop shopping expectations nor as easy for carriers to implement. as an informed option to restrict use. Perhaps most importantly, imposing prior written authorization as a condition of a carrier's use of CPNI would serve no legitimate customer privacy interest

The Commission need not further interpret or attach safeguards to Section 222(c)(2) and (c)(3) regarding disclosure of CPNI and aggregate customer information. Both sections are sufficiently clear on their face. Regarding the latter, the Commission should also refrain from imposing any notification requirement ("prior to" use, or otherwise), as Congress did not impose such a requirement.

Subscriber List Information should be provided pursuant to negotiations between the parties wherein fair compensation will be given for such information. SBC supports the Yellow Pages Publishers Association on this point.

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Information and Other Customer	)	
Information	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC"), by it attorneys and on behalf of its subsidiaries, hereby offers these reply comments in connection with the Commission's Notice of Proposed Rulemaking in the above referenced docket,[1] intepreting and implementing those portions of the Telecommunications Act of 1996[2] relating to Customer Proprietary Network Information ("CPNI") and other customer-related information.[3]

I. CONGRESS HAS STRUCK THE BALANCE BETWEEN PRIVACY AND COMPETITIVE CONSIDERATIONS TO REQUIRE EQUAL APPLICATION OF THE CPNI STATUTE TO ALL TELECOMMUNICATIONS CARRIERS.

The provisions of Section 222(c)(1) apply, without ambiguity, to "a telecommunications carrier that receives or obtains [CPNI]." Congress intended that no type or class of carrier be excluded from the statute's coverage. Any doubt is removed by the language of Section

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[1] FCC 96-221, released May 17, 1996.

[2] Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at, 47 U.S.C. § 151 et seq. ("1996 Act").

[3] Section 702 of the 1996 Act, adding Section 222, 47 U.S.C. § 222.

222(a): "Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, . . . customers. . . ."[4]

Many commentors agree that the CPNI statute applies to all telecommunications carriers.[5] Others ignore both the express language of the statute and Congress' intent; these carriers seek to have the Commission create exceptions or loopholes that would confer a competitive advantage upon them, while placing competitive disadvantages upon local exchange carriers ("LECs") or incumbent LECs ("ILECs"). Some examples are

- ILECs should be required to provide notification of customers' CPNI rights and to obtain prior written approval before accessing CPNI to market interexchange services;[6]
- Carriers serving less than five percent of the nation's presubscribed lines should be able to use CPNI to cross-market;[7]
- The "telecommunications service" distinctions between local and interexchange services should be eliminated for entities which do not possess "market power;"[8]
- A LEC should be required to obtain prior written authorization, file annual certifications of CPNI compliance, and assume other burdens;[9]

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[4] 47 U.S.C. § 222(a).

[5] SBC, at pp. 2-3; see also, e.g., PaOCA, at pp. 4-5; CPUC, at p. 9; Bell Atlantic, at p. 9; NYNEX, at pp. 19-20; U S WEST, at pp. 20-21. SBC's references to the comments of the parties to this proceeding employ the abbreviations used by those commentors.

[6] CompTel, at p. 10; Section 222(c)(1) makes no reference to ILECs or prior written approval.

[7] MFS, at p. 10; Section 222(c)(1) makes no reference to any "percentage" exception.

[8] Sprint, at p. 3; Section 222(c)(1) makes no reference to market power.

[9] AirTouch, at pp. 6-7, 12-13; Section 222(c)(1) makes no reference to prior written authorization, certification, or market share.

- For non-ILECs, a one-time advance written notification would suffice; ILECs should provide notification at least annually;[10]

Though seeking to advantage themselves, these commentors fail to recognize that where Congress intended to limit the obligations of Section 222 to fewer than all telecommunications carriers, it did so.[11] Subsection (c)(1) is expressly applicable to all telecommunications carriers, whether LEC or non-LEC, dominant or nondominant, incumbent or non-incumbent, or interexchange provider or local service provider. Congress decided to provide ironclad assurance that core CPNI protections would accrue to every consumer of telecommunications service, not to adjust imagined competitive disadvantages alleged by some carriers.[12]

Just as importantly, customers' privacy rights must be preserved regardless of the size or market position of a company. To conclude that a business with one hundred customers should treat its customers' information any differently than a business with eighty million customers would deny the privacy rights of some customers merely because of who serves them.[13]

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[10] C&W, at pp. 5, 7; Section 222(c)(1) makes no reference to ILECs.

[11] See, e.g., Section 222(e) (subscriber list information obligations applicable to a carrier "that provides telephone exchange service"); Section 222(c)(3) (use by a "local exchange carrier" of aggregate customer information for purposes other than as described in subsection (c)(1)); SBC at p. 3.

[12] ACTA complains that the Commission's Open Network Architecture's policies have failed. It attributes this failure in part to the "distorted rules regarding CPNI." ACTA, at p. 3. ACTA's complaints are better directed to the ongoing proceedings in Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20. They add nothing to the record here. If anything, the distortion about which ACTA complains has been cured. Section 222(c)(1) requires that all telecommunications carriers abide by the same CPNI provisions. Therefore, there can be no competitive disadvantages to any carriers.

[13] Some commentors urge that any uneven application of rules that the Commission may adopt in this proceeding would undercut customers' expectations of privacy. For example, the Pennsylvania Office of Consumer Advocate's comments demonstrate that, even apart from Congressional intent, Section 222(c)(1) should protect the privacy of all consumers and that all

(continued...)

Additionally, the Commission should not place different obligations on any particular class of telecommunications carriers based on competitive considerations. Congress has already "made the cut" on competitive issues.

As the Commission has noted elsewhere, Congress intended for the 1996 Act to encourage competition in, and reduce regulation of, the telephone industry.[14] The Joint Explanatory Statement states that the 1996 Act should provide "a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[15] The 1996 Act directed a move away from traditional regulatory approaches and lifted line of business restrictions so that market forces could function freely (e.g., through industry negotiations). It directed the Commission in areas such as open video systems and cable to formulate minimal, rather than onerous, guidelines. Other examples include eliminating the cable-telco cross ownership restrictions, and adding new laws devoted specifically to the development of competitive telecommunications service markets.[16] The Commission need not and should not modify the legislative choices made in connection with CPNI.

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[13](...continued)
consumers are equally deserving of protection regardless which telecommunications carriers serve them. PaOCA, at pp. 4-5. No state commission disagreed with the fact that the requirements of Section 222(c)(1) apply to all carriers, including state commissions representing California, Texas and Washington.

[14] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, NPRM, at paras. 1-3.

[15] S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 1 (1996).

[16] See, Sections 251, 252, 253 and 271 of the 1996 Act.

The proper course in this proceeding is not to "amend" Section 222(c)(1) by creating exceptions to or loopholes in the statute's equal application to all telecommunications carriers. Rather, the proper course is to devise a flexible application of the term "telecommunications service" (Section III, herein), and an informative, customer friendly and easy to administer CPNI approval process (Section IV, herein) that would accommodate all privacy and competitive concerns, as expressed in Section 222(c)(1).

II. THE COMPUTER III CPNI REQUIREMENTS SHOULD NOT APPLY AFTER THE COMMISSION ADOPTS RULES INTERPRETING SECTION 222.

At least four fundamental considerations warrant eliminating the Computer III CPNI requirements upon the Commission's adoption of rules interpreting the CPNI statute. First, as stated in Section I, supra, Section 222(c)(1) applies to every telecommunications carrier, without regard to dominance or type of service provided. Section 222(c)(1), therefore, directly conflicts with the Computer III CPNI rules, which apply only to some carriers. Second, Congress declined to incorporate into Section 222 any reference to the continuation of the Computer III CPNI rules. Third, due to market conditions and other competitive circumstances, no justification exists to treat the BOCs differently than competitive entrants. Fourth, implementing two different CPNI schemes would cause great customer and carrier confusion.[17]

Of those commentors favoring continuation of the Commission's pre-existing rules, none discusses these fundamental considerations. Few do more than simply state support for such a requirement.[18] All fail to dispute that Congress could have expressly continued the Commission's pre-existing CPNI requirements, but did not.

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[17] Ameritech, at pp. 14-16; Bell Atlantic, at pp. 9-10; BellSouth, at pp. 22-25; NYNEX, at pp. 20-21; Pacific, at pp. 14-17; SBC, at pp. 14-15.

[18] See e.g., AICC, at p. 8; CompTel, at p. 8.

Congress was aware of the Commission's Computer III nonstructural safeguards of which the CPNI rules were a part. When it found it necessary or appropriate to incorporate them into the 1996 Act, it did so. For example, in connection with payphone service, Congress directed the Commission to promulgate rules to, among other things:

> presubscribe a set of nonstructural safeguards for Bell operating company payphone service . . . ., which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry III (CC Docket No. 90-623) proceeding[.]

47 U.S.C. Section 276(b)(1)(C). Under the rule of statutory construction known as expressio unius est exclusio alterius, where the Congress expresses an intent in one section of a law but does not include a similar expression in another, intent should not be implied in the section from which it is excluded.[19]

No commentor favoring continuation of the CPNI-related nonstructural safeguards mentions this key omission. Yet, the omission offers compelling evidence that Congress did not intend that the Commission's pre-Act regulations be engrafted onto Section 222. The Commission should act on Congress' intent.

III. A FLEXIBLE APPLICATION OF THE TERM "TELECOMMUNICATIONS SERVICE" WOULD BEST SERVE THE PUBLIC INTEREST

A wide range of commentors agree that a flexible application of the term "telecommunications service" would be most appropriate for purposes of interpreting Section 222(c)(1).[20] For the reasons advanced by these commentors, the Commission should apply the term

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[19] Smith v. Baldwin, 611 S.W. 2d 611, 616 (Tex. 1980).

[20] See, e.g., AllTel, at pp. 4-5, ACTA, at p. 4; AT&T, at pp. 7-11; BellSouth, at pp. 7-10; CBT, at pp. 3-5, U S WEST, at pp. 4-6.

to include all telecommunications service offerings provided by a carrier (including an affiliated telecommunications carrier) to customers on an integrated or "packaged" basis.

First, as the Commission has acknowledged,[21] consumers want one-stop shopping -- a single point of contact for all of their telecommunications service needs. Customers likewise expect that the carrier will use all of the information available to it to better tailor service packages meant to meet their specific needs. Customers would be confused by and dissatisfied with a requirement that CPNI be pigeonholed by discrete services, because it does not reflect the reality of how telecommunications service is offered and because it would hinder or eliminate the convenience and efficiency of one-stop shopping. [22]

Second, the Commission has already concluded that broad CPNI use within a single integrated firm does not compromise customers' privacy expectations.[23] To the contrary, commentors observe that customers expect that their account information will be used to improve the range and quality of services provided to them,[24] so that their privacy expectations in this regard are quite different than in other contexts.

Third, as various competitive markets evolve in a one-stop shopping environment, the technologies and carrier distribution channels devised to meet customers' telecommunications service needs will not be accommodated by a narrow regulatory focus on "discrete" services. The

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[21] SBC, at p. 8 and n. 6; U S WEST, at p. 4 and Appendix A (further citations omitted).

[22] See generally, ACTA, at p. 4; AT&T, at p. 7; BellSouth, at pp. 9-10; CBT, at p. 4; SBC, at p. 8; U S WEST, at p. 4-5. To this extent, SBC agrees with the Texas PUC, which proposes that CPNI be used in connection with "any distinct service or service package that a customer can purchase from the telecommunications carrier." Texas PUC, at p. 8 (emphasis added).

[23] SBC, at p. 9 and n. 7; AT&T, at p. 8.

[24] Id.; see also, AT&T, at pp. 9-11; BellSouth, at p. 8.

bounds of telecommunications service offerings have been expanded to include local and long distance service, wireline and wireless service, and others. Congress also intended that carriers be permitted to enter each other's markets. A restrictive approach to a carrier's use of CPNI to offer integrated service packages would be difficult, if not impossible, for carriers to effectively administer. Ultimately, carrier entry into new markets would be hindered by artificial and inappropriate constraints.[25]

Finally, given that the Commission's rules defining the term "telecommunications service" must apply to all carriers, the burden on small companies must be considered. A restrictive definition would present particularly acute problems of administration, tracking and other burdens for such companies.[26]

Even among those who support "traditional" telecommunications service distinctions, several admit that such distinctions could quickly become outdated.[27] CompTel, for example, suggests that such distinctions "are becoming blurred by new service offerings comprising elements of several previously distinct categories."[28] Washington UTC notes that the changing meaning of "telecommunications service" may also require changes to any CPNI rules adopted here.[29] Pacific suggests that a mechanism be devised "to reexamine the 'buckets' as technology evolves."[30]

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[25] See CBT, at p. 4; SBC, at p. 9-10; U S WEST, at pp. 4-5.

[26] AllTel, at p. 4-5 (stating that, as a result of these considerations, the Commission should adopt "the widest possible parameters" for its definition of telecommunications service).

[27] E.g., CompTel, at p. 5.

[28] CompTel, at p. 5.

[29] Washington UTC, at p. 5.

[30] Pacific, at p. 3.

NYNEX also speaks of establishing "a concrete future point in time" to reevaluate the Commission's proposed service distinctions in light of technological, market and regulatory changes.[31]

The Commission should not establish CPNI rules that would apply or define "telecommunications service" in a way that is or will shortly become outdated, committing only to undertake a separate proceeding later to revise the rules. The technological and marketing phenomena driving changes in today's telecommunications service markets have already been put into motion. The Commission must adopt a better model -- a broad application of the term "telecommunications service"-- so that the Commission can act proactively, not reactively, and without the necessity of considering additional action in the near future.[32]

IV. A TWO-STEP APPROVAL PROCESS -- ONE-TIME NOTIFICATION PLUS A RIGHT TO CONTACT THE CARRIER SHOULD A CUSTOMER ELECT TO RESTRICT CPNI USE -- WOULD BE EFFECTIVE AND EASY TO ADMINISTER.

Several commentors suggest that the Commission construct a CPNI approval process that would allow a customer to be notified of his or her CPNI rights and to express approval either orally

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[31] NYNEX, at p. 11.

[32] SBC joins with those who correctly argue that CPE and enhanced services should be encompassed within Section 222(c)(1)(B), even if not Section 222(c)(1)(A), particularly for the persuasive reasons stated by NYNEX, at pp. 11-13. See also, Ameritech, at pp. 4-6; Bell Atlantic at p. 7; CBT, at pp. 6-7; U S WEST, at p. 14. SBC opposes, however, suggestions contained in the NARUC resolution regarding CC Docket No. 90-623, NARUC, at p. 7, that the FCC should ensure that state regulatory agencies have full access to the books and records of affiliates of an LEC for the purpose of reviewing enhanced services-related affiliate transactions. The power and authority of state agencies is determined by state law; the Commission cannot confer authority not otherwise already held by them. SBC acknowledges that NARUC's intention in including the resolution may have been for the limited purpose of submitting comments on CPNI requirements. However, to the extent that NARUC may be requesting the expansion of this document to include state access to affiliate records generally. SBC is opposed to such expansion.

or in writing.[33] Both forms are legally sufficient. The Act does not require either that written notice be given or that a written response be received, in order for CPNI to be used for a purpose other than as provided by Section 222(c)(1)(A) or (B).

Customers should be clearly apprised of their CPNI rights in a consistent, uniform manner. Further, carriers should have evidence to establish that notification and approval have occurred.[34] Nonetheless, repetitious and confusing contacts with customers regarding CPNI-related matters should be avoided.

In light of these considerations, a one-time CPNI notification to customers would be appropriate, as has been suggested by several commentors.[35] Either a bill message or insert would suffice.[36] While the Commission could establish the minimum contents of the notification, it should allow carriers to "customize" them in other respects as appropriate for their individual regions, to ensure fair and adequate disclosure.[37]

With adequate notification, telecommunications carriers should be permitted to use CPNI without written customer approval. In other words, after notification, approval should be implied absent a customer's request to restrict CPNI use. This form of approval is acceptable under the

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[33] See eg., Ameritech, at pp. 7-11; BellSouth, at pp. 13-17; NYNEX, at pp. 14-16; Pacific, at pp. 5-10.

[34] See NARUC, at p. 3.

[35] AT&T, at p. 15; BellSouth, at pp. 16-17; U S WEST, at p. 18.

[36] CPUC, at p. 11.

[37] As SBC suggested, the contents should include an explanation of: CPNI, the carrier's intentions with respect to CPNI use, the customer's right to restrict such CPNI use, and the means by which the customer may restrict such use. SBC, at p. 11.

Act.[38] It is consistent also with the Commission's observation that Section 222(c)(1) allows oral approval, because unlike Section 222(c)(2), written authorization is not specifically required under Section 222(c)(1). NPRM, ¶ 15. No commentor urging written authorization adequately addressed this key distinction and manifestation of Congressional intent.[39] Carriers should be permitted to accept as sufficient evidence of approval the lack of a database or other account indication of CPNI restriction.[40]

V. DISCLOSURE OF CPNI (INCLUDING AGGREGATE CUSTOMER INFORMATION) TO UNAFFILIATED THIRD PARTIES SHOULD BE GOVERNED BY THE ACT.

A. The "Affirmative Written Request" Requirements of Section 222(c)(2) Should Govern Release of CPNI to Unaffiliated Third Parties.

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Several commentors support the Congressional mandate that CPNI disclosure to a third person occur only "upon affirmative written request by the customer."[41] These commentors also

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[38] Of course, the customer's choice (whether to restrict or not) should remain in place unless the customer contacts the carrier to change that choice. AT&T, at p. 16, Ameritech, at p. 11.

[39] This is another reason to reject the claims of those who argue that only incumbent LECs or even all LECs should be bound to a prior written authorization requirement. See, e.g., Arch, at p. 6; AirTouch, at pp. 6-7; AICC, at pp. 9-10.

[40] Cf., Bell Atlantic, at p. 9. The Commission should also decline to consider the Texas PUC's proposal for prior written authorization. Texas PUC, at p. 9. This proposal is contrary to PUC rules now in place in Texas, and is also contrary to rules that the PUC recently proposed in order to comply with the Texas Public Utility Regulatory Act of 1995. Under both regimes, a "right to restrict" CPNI use is the customer approval mechanism, not an affirmative prior written authorization. Compare, 16 Texas Adm. Code 23.57(e) (". . . telecommunications utility personnel may not use customer-specific CPNI to market supplemental services to a residential customer if restriction is requested by such residential customer") with 21 Tex. Reg., 1435-37, issued February 27, 1996, and proposing Rule 23.57(e)(2)(B) (". . . a telecommunications utility may not use specific CPNI for commercial purposes other than the sale, provision, or billing and collection of its telecommunications services to a residential customer if a restriction is requested by such residential customer.").

[41] SBC, at p. 10, n. 10; CBT, at p. 9; NYNEX, at p. 23; Pacific, at pp. 12-13; USTA, at p. 7.

correctly suggest that no additional safeguards are required in order to sufficiently protect against unauthorized disclosure of CPNI to third parties.[42] Contrary suggestions do not withstand scrutiny.

For example, CompTel urges that the Commission address situations in which a local exchange reseller serves a customer. It argues that the underlying carrier should not use for its own purposes CPNI to which the reseller has given it access and that the reseller should not be required to secure the end user's consent to allow it access to the customer's CPNI.[43] AT&T urges the Commission to clarify that incumbent LECs are not prohibited from disclosing CPNI to a competing LEC that will initiate service to the customer, even without customer approval.[44]

The CPNI statute, however, answers these hypothetical questions. Should a customer's "new" carrier wish to be provided a customer's CPNI related to the "old" carrier's prior provision of telecommunications service, the new carrier must secure "written affirmative" consent pursuant to Section 222(c)(2). Likewise, the old (or underlying) carrier must secure "written affirmative" approval from its previous customer before it may use for its own purposes CPNI developed solely as a result of the new carrier's provision of telecommunications service. Finally, the "old" carrier may use CPNI developed as a result of the prior carrier-customer relationship without the "new" carrier's approval. These principles, already inherent in Section 222(c)(2), flow from the recognition that CPNI stems from a specific "carrier-customer" relationship, as indicated in subsection (f).

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[42] CBT, at p. 9; NYNEX, at p. 23; Pacific, at p. 12.

[43] CompTel, at pp. 10-11. To similar effect are the comments of TRA, at pp. 8-9.

[44] AT&T, at pp. 17-18.

B. No Local Exchange Carrier Should Be Required To Notify Others "Prior To" Using Aggregate Customer Information.

Section 222(c)(3) provides that when a local exchange carrier uses aggregate customer information for purposes other than as described in Section 222(c)(1), it must make the information available to others "upon reasonable request therefor." It does not also require that the carrier notify others of the availability of the information. Several commentors correctly observe that no notice (whether before or after the fact of CPNI use) was intended by Congress, and that "the 1996 Act speaks for itself"[45] in this regard. Further, the Texas PUC likewise agrees that it is not necessary to burden carriers with the additional responsibility of identifying and notifying others who may have some potential use for the information.[46] Opposing commentors do not adequately address these points.[47]

Excel incorrectly asserts that absent a "prior to" notification requirement, LECs could use aggregate information while also denying others access to such information.[48] The statute specifically provides that all "other carriers or persons" are permitted access "upon reasonable request therefor." 47 U.S.C. Section 222(c)(3). The statute does not deny other carriers or persons access to aggregate customer information; instead, it provides a time-tested means by which to do so.[49]

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[45] ALLTEL, at p. 6; see also, SBC, at pp. 13-14; Cincinnati Bell, at p. 11; NYNEX, at p. 23; Pacific, at p. 13.

[46] Texas PUC, at pp. 10-11. CFA, urging "maxim[um] disclosure," offers no analysis of the governing statute, Congressional intent, or the burdens discussed by the Texas PUC. CFA, at p. 6.

[47] Excel, at p. 5; ITAA, at pp. 8-9.

[48] Excel, at p. 5.

[49] APCC claims that Section 222(c) should be construed to entitle independent payphone (continued...)

VI. REASONABLE AND NONDISCRIMINATORY RATES FOR SUBSCRIBER LIST INFORMATION SHOULD BE ESTABLISHED BETWEEN THE PROVIDER AND PUBLISHER AND SHOULD BE BASED ON FAIR COMPENSATION.

The Commission should not prescribe rates for subscriber list information. The parties to the transaction should be permitted to negotiate these rates in a manner which accounts for the varying listing needs of the particular directory publisher and ensures fair compensation to the provider of the listings.[50]

At most, the Commission need only establish principles for setting rates for subscriber list information. These principles should provide that fair compensation is owed subscriber list information providers, and that this fair compensation must account for the three elements identified by the Yellow Pages Publishers Association: the pro rata cost of gathering and maintaining the information, the cost of providing the information to the publisher, and the value of the listings themselves.[51]

YPPA's arguments demonstrate that rates built upon fair compensation, not incremental costs, are what Congress intended. Rates based on incremental costs would be neither fair nor

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[49](...continued)
providers ("IPPs") aggregate information developed at LEC payphone sites. APCC at p. 5. Its request should be denied. First, the traffic and usage information referred to by APCC may not even constitute "aggregate customer information" for purposes of the CPNI statute, particularly given that parties other than the site owner generate the information. In addition, such traffic and usage information is network information, which the statute does not require to be disclosed to requesting third parties. Even assuming the contrary, APCC reads Section 222(c)(3) too broadly. That section merely requires that such aggregate information be made available upon request where the LEC uses it "other than for purposes described in paragraph (1)." A LEC which uses aggregate data derived from its payphone service for purposes described in Section 222(c)(1) has no obligation to make the information available to IPPs upon their request.

[50] SBC, at pp. 17-18; CBT, at p. 12; Vitelco, at p. 2.

[51] YPPA, at pp. 7-11. SBC further agrees with YPPA's position that "nondiscriminatory" means that like publishers (whether or not affiliated with a telephone company) with like requests will be sold listings on the same or similar rates, terms, and conditions. Id. at p. 7.

compensatory, particularly given that publishers often use listings as sales leads to sell yellow pages advertising.

VII. CONCLUSION

SBC respectfully submits that the Commission should adopt rules interpreting and implementing Section 222 of the 1996 Act that are consistent with these and SBC's original comments filed in this proceeding.

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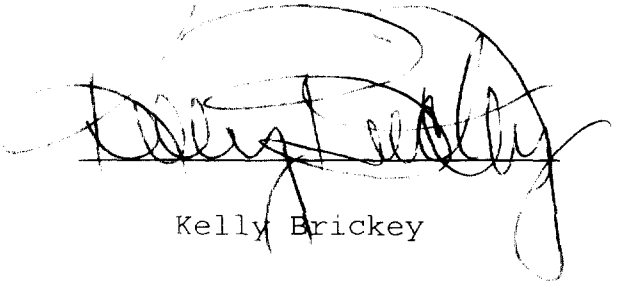
CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing "Reply Comments of SBC Communications Inc.", have been served June 26, 1996 to the Parties of Record.



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